

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
**Trademark Trial and Appeal Board**  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Baxley

Mailed: December 6, 2002

Opposition No. 110,114

American Soccer Company,  
Inc.

v.

Go Score, L.L.C.

**Andrew P. Baxley, Interlocutory Attorney:**

On August 27, 2002, the Board issued an order stating that it would not consider counterclaim defendant American Soccer Company's ("American Soccer") motion to dismiss (filed May 31, 2002) on the ground that such motion is untimely. This case now comes up for consideration of American Soccer's motion (filed September 9, 2002) for reconsideration of that decision.

Motions for reconsideration, as provided in Trademark Rule 2.127(a), permit a party to point out any error the Board may have made in considering the matter initially. American Soccer argues that, inasmuch as Trademark Rule 2.127 contains no limitation on when a motion to dismiss may be brought in inter partes proceedings before the Board, its motion was properly brought under Fed. R. Civ. P. 52(c) and therefore should receive consideration.

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The Board disagrees. For reasons of administrative economy, it is the policy of the Board not to read trial testimony or examine other trial evidence prior to final decision. See *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992); *Devries v. NCC Corp.*, 227 USPQ 705 (TTAB 1985); *Rainbow Carpet, Inc. v. Rainbow International Carpet Dyeing & Cleaning Co.*, 226 USPQ 718 (TTAB 1985). Therefore, the only motions to dismiss that the Board entertains during trial are those under Trademark Rules 2.132(a) and (b). See TBMP Section 502.01; Gary D. Krugman, *TIPS FROM THE TTAB: Motions for Judgment After Commencement of Testimony Periods*, 73 Trademark Rep. 76 (1983).

In sum, the Board has carefully reviewed American Soccer's motion for reconsideration and the arguments therein. However, for reasons set forth above, the Board remains of the view that its August 27, 2002 decision is correct.

In view thereof, the motion for reconsideration is denied. Inasmuch as American Soccer has not stated that it will rely on the motion to dismiss as its brief on the case, the motion to dismiss will receive no further consideration.

Turning to American Soccer's motion to suspend, that motion is granted to the extent that the Board deems the

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filing of American Soccer's motion for reconsideration to have tolled the running of all dates herein.

Proceedings herein are resumed. The remaining trial dates are reset as follows:

Defendant's 30-day testimony period to close: **1/31/03**

15-day rebuttal testimony period to close: **3/17/03**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.